

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **July 9, 2007**

Time: **11:15am**

Place: **State Office Bldg, 4112**

Attendees

(Attendees = x)

Commission Members

David M. Lattin, Salt Lake
xCanyon Anderson, Davis

xGlen W. Roberts, Utah
xGarry M. Goodsell, Iron

xR. Curt Webb, Cache

Department Staff

xJohn E. "Mickey" Braun, Jr.
Ass't Commissioner

xPerri Babalis
AG Legal Counsel

Darrel Powell
Dir. Market Conduct

xMark Kleinfeld
Admin. Law Judge

xGerri Jones
MC Examiner

xSheila Curtis
MC Examiner

xJilene Whitby
PIO/Recorder

Public

Mel Smith

Paul Newton

David Moore

Jeff Weiner

Robert Rice

MINUTES

I. Welcome and Introductions / John Braun

- Since the Chairman's tenure had ended and a quorum would not exist until the new Commission members were sworn in, Mickey took charge of the meeting and welcomed the attendees.
- Julie Olearain swore in the two new commission members, Garry Goodsell and Canyon Anderson.
- Election of a chairman then took place. Curt nominated Glen and Garry Goodsell seconded the nomination. Glen then nominated Curt. Due to no second to Curt's nomination, Glen's nomination died. The vote was unanimous making Glen the Commission Chair. Glen then took charge of the meeting.

II. Adoption of Minutes of Previous Meeting

Curt made a **motion** to accept the minutes without change and Canyon seconded it. The vote was unanimous.

III. Introductions made of staff to new commissioners.

New commission members were introduced to staff. Mickey asked if it was all right to show Canyon's Bountiful business address on his contact information so as to maintain the requirement that members be from different counties. All agreed.

IV. Review & Concur with Most Recent Licensee Report

- Canyon asked if the report could include who the licensee was appointed by. Mickey said licensees do not have to be appointed to have a license but they can't operate without an appointment.
- The question was asked if the CE has to be updated and in the system prior to renewal. Mickey said it would need to be in place two months prior to renewal. Licensees will be notified of this requirement. Goodsell made the **motion** to accept the report and Canyon seconded it. The vote was unanimous.

IV. Number of Cases Open & Closed

- Mickey provided Commission members with a copy of the first annual report to the legislature's Business and Labor Interim Committee, as required by law. It provides them with specific information about the Title and Escrow Commission. The ".01 percent of total

insurance premium" referred to in the second paragraph should be .1%. It was noted by several that the Utah Title Premium was ten times more than the \$9,875,188 noted in the report.

- Mickey provided the Commission with a report entitled "Comparisons for the Title and Escrow Commission." He did not know if the 395 producer licensees involved in closed investigations in FY 2007 included title licensees. There may be a few. Mickey said the law requires the department to report violations to the Legislature. Mickey will make the corrections noted above when he attends the interim meeting on the 18th. David asked if this will be put on the website? Mickey said it would.

V. Review & Concur with Enforcement Case Report

Mark distributed information about the case. The respondent failed to pay the annual assessment when due. The respondent has not responded to three notices sent by the department. The department is now suggesting a fine of \$3,000 in addition to the assessment and revocation of their license. The respondent is a nonresident licensee. Canyon asked if the notices were sent certified mail? Mark said they were not because it is the licensee's responsibility to provide the department with a change in their address. Curt made a **motion** to concur with the department, Canyon seconded the motion and the vote was unanimous in its favor.

VI. Old Business

- **Rule Updates - R590-153 / Mickey**

This rule is in the rulemaking process and may be adopted by August 7. So far only one response has been received asking that the amount on novelties be increased. The Commission decided not to increase the amount on novelties.

- **Proposed "Boilerplate Order" to Streamline Investigations / Mickey**

Not completed yet.

- **Comparisons for Title and Escrow Commission / Mickey**

- Canyon asked what kind of difference the boilerplate would make? Mickey said very little because there are few market conduct complaints filed with the department. It will show us where our cases are occurring and why.
- Mickey provided a report entitled, "Comparison for Title and Escrow Commission" showing how title licensees compared with the others licensed by the department. Companies must report cancellation of agents in adverse situations only.
- Canyon asked Gerri if they have asked underwriter to audit files? No.

VII. New Business

Free Leads to Loans / Gerri

Joseph McPhee sent the department an email asking their position on Free leads for loans from a lender costing \$25 each. Curt said the idea was to keep the playing field level. One person noted that they received a bill for \$800 for leads given to a client. If it costs one person \$800 and another nothing then the playing field is not level. Dave said that R590-153-5 says a person is not to market anything free. Glen asked that this be put on next agenda to discuss further.

VIII. Other Business from Committee Members

- **Curt / Recommendation for changes in the Rules R592-5.**

- Can we define "hold?" It is not used anywhere else in the code. David Moore was concerned that since he teaches CE for the Real Estate Division he is shown as one of their licensees, thus having a dual license. Does there need to be a clarification in the law to exempt him from this dual licensing law?
- Glen asked what "certified" meant? Jeff Weiner suggested adding a Subsection (5) to Section 3 of the rule. It should read; "Held" for purposes of this rule does not include an inactive license or a CE instructor certificate." Perri suggested creating a new Section (1) in the Definitions Section that would read:

(1)(a) "Dual licensed title licensee" has the same meaning as set forth in 31A-2-402.

- (b) "Dual licensed title licensee" does not mean:
 - (i) a title licensee who holds an inactive license under 31A-2-402-3(b)(i), (ii) and (iii); or
 - (ii) a title licensee who holds an education provider certificate.
 - Glen **moved** to accept Perri's changes and Garry seconded it. Curt noted that the bill's sponsor had one complaint, that it took too long for the department to do anything. The vote was unanimous in favor of Glen's motion
 - **Curt / Recommendation for changes in the Rules R592-6.**
 - Anything that is not prohibited in the code is then accepted. Split closings are not prohibited. The Commission can address the issue of cash only closings. The Commission has the authority to regulate a split and to define it.
 - Glen asked if those present were in favor of a split with a cash buyer or a split without a cash buyer. Perri said that a person has to provide a title insurance product to do an escrow service. The Attorney General's position is; if you represent the buyer on a cash transaction and no title policy is issued, then providing escrow services is prohibited.
 - Curt made the **motion** that the Commission's opinion be that a split transaction on a cash sale is a violation of the state statute 31A-23a-406(1). Mr. Rice noted that if we start to compartmentalize we move away from the lender's instructions and one escrow? Canyon seconded the motion. The vote was unanimous in its favor.
 - **The position of the Commission is** that you cannot act as an escrow in a cash only closing. If a person is not issuing title insurance then they can't act as an escrow.
 - It was determined that the word "acceptance" in R592-6-3(1)(b) be changed to "receipt."
 - It was decided that R592-6-3(2)(b) and (c) be deleted. The title agency can accept money but not deposit it.
- Subsection 4.(3)(b)(i) and (ii) should read as follows:
- (i) ~~[monies collected via wire transfer may be deposited and must be forwarded within one business day of receipt; or~~
 - ~~(ii)]~~ monies ~~[collected]~~received via any ~~[other]~~ method other than ~~[except]~~ wire transfer may not be deposited and must be forwarded when the signed real estate documents are forwarded[.]; or
 - (ii) monies received via wire transfer must be forwarded within one business day of receipt.
- Curt **moved** that these changes be made and Garry seconded it. The vote was unanimous.

IX. **Reminder:**

X. **Adjourned:** Curt made the **motion** to adjourn.

XI. **Next Meeting:** August 13, 2007, 9a.m.

Next Meeting

9:00 a.m.

August 13, 2007

September 10, 2007

October 9, 2007

November 12, 2007

December 10, 2007